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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PHILIP DEL COSTELLO,
Petitioner,
v.
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA AS AMICUS CURIAE

DAVID PREVIANT
ROBERT M. BAPTISTE
ROLAND P. WILDER, JR.
(Counsel of Record)
WILMA B. LIEBMAN
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
Area Code (202) 624-6949
Attorneys for the International Brotherhood of Teamsters, Amicus Curiae

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BRIEF FOR THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

This brief *amicus curiae* is filed by the International Brotherhood of Teamsters (IBT) in support of Respondent Local 557, Freight Drivers and Helpers, International Brotherhood of Teamsters, with the consent of all parties.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case arises under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, which contemplates suits by employees, as well as suits by and against employers and labor organizations. *Smith* v. *Evening News Ass'n*, 371 U.S. 195 (1962). Section 301 "reflects the interest of Congress in promoting 'a higher degree of responsibility upon the parties to [collective bargaining] agreements . . . .' S. Rep. No. 105, 80th Cong., 1st Sess. 17

(1947)." *Hines* v. *Anchor Motor Freight*, 424 U.S. 554, 561 (1976). Under § 301 an employee can maintain suit against his union for breach of the duty of fair representation, and against his employer for breach of contract, in a single action. *Hines* v. *Anchor Motor Freight*, *supra*, 424 U.S. 554; *Vaca* v. *Sipes*, 386 U.S. 171 (1967).

The instant action is one envisioned by *Hines*. Brought against an employer and a union, this suit seeks to relitigate a claim of wrongful discharge previously decided adversely to the employee by an arbitral panel convened pursuant to the collective bargaining agreement's grievance arbitration procedure. Under that agreement, the arbitral decision was final and binding. But the suit alleges that, contrary to the arbitration decision, the discharge complained against was in violation of the contract, and that the union's failure to represent the employee fairly at the arbitration hearing contributed to the erroneous outcome.

The issues presented here relate to the appropriate statute of limitations to be applied to a hybrid § 301 breach of contract and fair representation action. Since § 301 contains no limitations provision, the timeliness of such suits is controlled, as a matter of federal law, by the most appropriate state statute of limitations. *UAW* v. *Hoosier Cardinal Corp.*, 383 U.S. 696 (1966). In selecting the most appropriate state statute of limitations, a federal court must characterize the action. Only if that state law characterization is "unreasonable or otherwise inconsistent with national labor policy," should it be rejected. *UAW* v. *Hoosier Cardinal Corp.*, *supra*, 383 U.S. at 706. In the latter instance, the court may exercise a degree of "judicial inventiveness" in fashioning an appropriate federal standard. *Id.* at 701.

1. In *UPS* v. *Mitchell*, 451 U.S. 56 (1981), this Court determined that a *Hines* § 301 suit was closely analogous to a state action to vacate an arbitral award, and that borrowing New York's 90-day limitation for such suits

would further federal policy favoring the final and rapid disposition of labor disputes. State limitations on actions to vacate arbitral awards furnish an appropriate solution in *Hines* § 301 cases. These specific limitations provisions are closely analogous to the cause of action, and therefore are preferable to § 10(b), 29 U.S.C. § 160(b), a general limitations provision for unfair labor practices that Congress did not choose to apply to § 301 suits. Considering § 301's breadth and the many causes of action embraced within it, Congress' choice to leave the limitations governing such diverse actions to state law is strongly suggested by logic, as well as by decisional law extending as far back as 1830.

A *Hines* § 301 suit is more closely analogous to an action to vacate an arbitration award than to an unfair labor practice proceeding. The duty of fair representation was implied from the exclusive representation status granted unions by § 9 of the National Labor Relations Act, 29 U.S.C. § 159(a). It was enforced by suit in the federal courts for many years before the NLRB concluded that the duty's breach could also be remedied under § 8's unfair labor practice provisions. *Miranda Fuel*, 140 N.L.R.B. 181 (1962), *enforcement denied*, 326 F.2d 172 (2d Cir. 1963). Admittedly, a § 301 unfair representation action "is more a creature of 'labor law' as it has developed since the enactment of § 301 . . . ." *UPS* v. *Mitchell*, *supra*, 451 U.S. at 63. Nevertheless, when the action is brought in a post-arbitration setting, and the threshold issue is whether the award will be upset, the state limitations statute enacted specifically for suits to vacate arbitral awards is more nearly analogous than any general limitations provision.

2. The rule of *Mitchell* applies both to the fair representation claims against unions and to the claims against employers. Characterization of the *Hines* action as one closely analogous to a suit to vacate an arbitral award aptly describes the claims against both parties. The issue common to both union and employer is whether the ar-

bitral award may be vacated because the union's conduct tainted the proceedings; necessarily, the claims against both parties call for common and interrelated elements of proof. Application of the relatively short state arbitration statutes for both claims also furthers federal policy interests calling for the speedy and final resolution of labor disputes by a method agreed upon by the parties. At the same time, the equal limitations rule will preserve an equal right to action against both employer and union. This is necessary to assure an adequate remedy for the employee and to allocate damages properly between the parties. *Vaca* v. *Sipes*, *supra*, 386 U.S. at 187, 197.

3. Section 10(b)'s six-month limitation should be applied to unfair representation claims against both employers and unions in (a) post-arbitration § 301 actions where the forum state has not enacted a limitations period governing suits to vacate arbitral awards and (b) § 301 actions where the merits of the plaintiff's contract claim have not been arbitrated. In both instances, the fair representation component of the action makes a contract characterization inappropriate. And, the states' multi-year limitations on contract, tort, and malpractice actions are too long to be consistent with federal policy. *UPS* v. *Mitchell*, *supra*, 451 U.S. at 62-63. Even where state statutes limiting actions to vacate arbitral awards are available, they are less analogous than § 10(b) when there is no award to vacate. Unlike the *Hines* case, the central issue in suits where there has been no arbitration more closely resembles the fair representation unfair labor practice. Less "judicial inventiveness" is called for in applying § 10(b) than in borrowing inapposite state characterizations.

4. The "final and binding" awards of joint labor-management committees are the equivalent of final and binding arbitral awards. *Drivers Union* v. *Riss*, 372 U.S. 517 (1963). Contrary to the argument advanced by *Amicus* Teamsters for a Democratic Union, a decision by the joint committee adverse to the grievant does not repre-

sent a discretionary choice by the union to abandon a grievance. Instead, an adverse joint panel decision forecloses any further action because it is final and binding on all parties. The union members on the joint committee are not from the same local union which presents the case, so they have nothing to gain or lose whether the case is finally decided or deadlocked. Accordingly, for limitations purposes, a suit to challenge a final and binding joint committee award is to be treated as an action to vacate an arbitral award.

ARGUMENT

I. THE TIMELINESS OF § 301 FAIR REPRESENTATION SUITS IS CONTROLLED BY THE MOST APPROPRIATE STATE STATUTE OF LIMITATIONS

A. The Traditional Rule Of Borrowing State Statutes

Congress has not enacted a statute of limitations governing § 301 actions. Addressing the question whether to create by judicial fiat a federal statute of limitations for § 301 claims, this Court, in *UAW* v. *Hoosier Cardinal Corp.*, 383 U.S. 696, 703-05 (1966), affirmed the traditional rule that where a federal statute fails to specify a limitations period, the most clearly analogous statute of limitations of the forum state should govern if it conforms with the underlying policy of the federal statute. The Court thus rejected the argument that it devise a uniform time limitation to close the statutory gap left by Congress in § 301:

> "[T]he teaching of our cases does not require so bald a form of judicial innovation. Lincoln Mills instructs that, in fashioning federal law, the 'range of judicial inventiveness will be determined by the nature of the problem.' 353 U.S. at 457. We do not question that there are problems so vital to the implementation of federal labor policy that they will command a high degree of inventiveness from the courts. The problem presented here, however, is not of that nature." [383 U.S. at 701.]

Although the *Hoosier* Court acknowledged that application of state statutes of limitations will not establish a uniform standard of timeliness, it nonetheless concluded that lack of uniformity in limitations provisions was unlikely to affect significantly substantive rights in the collective bargaining process. It reasoned as follows:

> "The need for uniformity . . . is greatest where its absence would threaten the smooth functioning of those consensual processes that federal labor law is chiefly designed to promote—the formation of the collective agreement and the private settlement of disputes under it. For the most part, statutes of limitations come into play only when these processes have already broken down. Lack of uniformity in this area is therefore unlikely to frustrate in any important way the achievement of any significant goal of labor policy . . . . [T]here is no justification for the drastic sort of judicial legislation that is urged upon us." [383 U.S. at 702-03 (footnote omitted).]

Since 1830 this Court has consistently borrowed the most analogous state statute of limitations where federal law does not specify a limitations period.[1] *Id.* at 703-04. Most recently in *UPS* v. *Mitchell*, 451 U.S. 56 (1981), the Court reaffirmed this general principle in a *Hines* § 301 fair representation suit identical in character to the instant matter, and held that state statutes for vacating arbitral awards should be applied.

Petitioner now argues, however, that *Mitchell* expressly left open the question whether a state limitations period should be borrowed, or whether federal courts should instead apply the six-month limitations period found in § 10(b) of the National Labor Relations Act (NLRA), 29 U.S.C. § 160(b). In *Mitchell*, the American Federa-

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[1] *E.g.*, *Board of Regents* v. *Tomanio*, 446 U.S. 478 (1980); *Johnson* v. *Railway Express Agency*, 421 U.S. 454, 462 (1975) and cases cited therein. *See also UAW* v. *Hoosier Cardinal*, *supra*, 383 U.S. at 704 and cases cited therein.

tion of Labor and Congress for Industrial Organizations filed an *amicus curiae* brief arguing that § 10(b) was the appropriate limitations period in hybrid § 301 fair representation cases. In its view, the *Hoosier* rule was not controlling as it involved a § 301 breach of contract action by a union against an employer, whereas actions brought by employees against both union and employer are hybrid actions, with the union's duty of fair representation being implied from the NLRA. The Court declined to consider this argument since it was not raised by either of the parties, noting that the issue before it was which state statute of limitations should be borrowed, and not whether such borrowing was appropriate. 451 U.S. at 60 n.2.[2]

At the outset, we disagree that the propriety of borrowing state statutes in post-arbitration § 301 cases was left open in *Mitchell*. The Court stated without any equivocation that, " 'the timeliness of a § 301 suit . . . is to be determined, as a matter of federal law, by reference to the appropriate state statute of limitations.' " 451 U.S. at 60, quoting *Hoosier Cardinal, supra*, 383 U.S. at 704-705.[3] Moreover, while Petitioner's § 10(b) argument,

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[2] In the wake of *Mitchell* the courts have reached varying conclusions in considering the § 10(b) argument. *Compare Flowers* v. *Steelworkers, Local 2602*, 671 F.2d 87 (2d Cir. 1982), *cert. granted*, 51 U.S.L.W. 3419 (U.S. Nov. 29, 1982) (No. 81-2408) and *Edwards* v. *Sea-Land Service Inc.*, 678 F.2d 1276 (5th Cir. 1982) (§ 10(b) rejected) with *Badon* v. *General Motors*, 679 F.2d 93 (6th Cir. 1982) (§ 10(b) used where state statute found inapplicable). *See also Hall* v. *Printing Union Local 3*, 112 L.R.R.M. 2151 (7th Cir. 1982) (§ 10(b) applied in case where no arbitral award was involved); *Davidson* v. *Roadway Express, Inc.*, 650 F.2d 902, 904 n.2 (7th Cir. 1981) (§ 10(b) issue questioned but not decided). The district courts have also reached contrary conclusions. *See*, Pet. for Cert., *United Steelworkers* v. *Flowers* (No. 81-2408), at 9 and n.3.

[3] In contrast, the separate concurring opinion of Justice Blackmun reflects his preference for the § 10(b) argument, but states that its resolution should await the development of a full adversarial record. 451 U.S. at 65.

echoing that made by the AFL-CIO in *Mitchell*,[4] has some appeal, it is not as compelling as its adherents describe it. Nor does it warrant a departure from the preferred traditional approach of borrowing the most appropriate state statute of limitations. This is not to say that § 10(b) has no utility in some situations. See, *infra*, pp. 18-24. But where the state statute provides a reasonable solution, consistent with national labor policy, it should be borrowed. *UAW* v. *Hoosier Cardinal Corp.*, *supra*, 383 U.S. at 706.

As the Seventh Circuit Court of Appeals in *Stevens* v. *Gateway Transportation Co.*, 112 L.R.R.M. 2177, 2179 (1982), stated in following *Mitchell*:

> "Federal courts look to state law in fashioning appropriate limitations periods for suits like plaintiffs' not because principles of federalism require it, but because the 'range of judicial inventiveness' in such matters is not, and should not be, unlimited. [Hoosier Cardinal, 383 U.S.] at 701, quoting *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448. That range extends only so far as national interests require, and if state law is consonant with those interests and lack of uniformity in federal law would not threaten them, there is no need for a federal court to do more than adopt state law."

B. Resort To § 10(b) Is Neither Necessary Nor Desirable In Post-Arbitration § 301 Suits

The § 10(b) argument is not flawed simply because it would require departure from an established rule; its substance is faulty when applied to post-arbitration § 301 cases. According to the argument, a hybrid § 301 case involves allegations that the union breached its duty of fair representation—conduct that may also constitute an unfair labor practice. Since § 10(b) reflects Congress'

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[4] This argument is also made by Petitioner in *United Steelworkers of America* v. *Flowers*, *cert. granted*, 51 U.S.L.W. 3419 (U.S. Nov. 29, 1982) (No. 81-2408).

judgment as to the appropriate limitations period for unfair labor practices, it is the clearest indication of its intent as to "when claims of a very similar or identical character must be brought." *UPS* v. *Mitchell*, 451 U.S. at 67-68 n.3 (Stewart, J. concurring).

The duty of fair representation is not expressly set forth in the federal labor statutes. It was first implied from Congress' grant of exclusive representation status to unions certified under the Railway Labor Act, 45 U.S.C. § 151, *et seq.*, in a series of cases involving racial discrimination. *Steele* v. *Louisville & Nashville R.R.*, 323 U.S. 192 (1944); *Tunstall* v. *Brotherhood of Locomotive Firemen*, 323 U.S. 210 (1944). Later, the fair representation duty was extended to unions certified under § 9(a) of the NLRA, 29 U.S.C. 159(a), as the exclusive bargaining representative selected by a majority of employees in an appropriate bargaining unit. *Syres* v. *Oil Workers*, 350 U.S. 892 (1955). *See also Ford Motor Co.* v. *Huffman*, 345 U.S. 330 (1953). Not until 1962 did the NLRB conclude that breach of a union's duty of fair representation constitutes an unfair labor practice prohibited by § 8(b)(1)(A) of the NLRA, 29 U.S.C. § 158(b)(1)(A), even though § 8(b), proscribing union unfair labor practices, had been enacted in 1947. *Miranda Fuel Co.*, 140 N.L.R.B. 181 (1962), *enforcement denied*, 326 F.2d 172 (2d Cir. 1963).

Thus, the duty of fair representation derives from the union's exclusive representation status granted by § 9 of the NLRA rather than from the unfair labor practice provisions in § 8 of the Act.[5] Section 10(b), enacted in 1947, is "directed solely to the administrative procedure established by Congress in the National Labor Relations Act for the resolution of unfair labor practice charges arising under, and processed in accordance with, that

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[5] *Syres* v. *Oil Workers*, *supra*, 350 U.S. 892; *Humphrey* v. *Moore*, 375 U.S. 335, 351-359 (Goldberg, J., concurring). *But cf. Ford Motor Co.* v. *Huffman*, *supra*, 345 U.S. 330; *Wallace Corp.* v. *NLRB*, 323 U.S. 248 (1944).

Act . . . ." *UPS* v. *Mitchell*, *supra*, 451 U.S. at 75 n.8 (Stevens, J. concurring in part and dissenting in part).

Moreover, § 10(b) was enacted before this Court recognized the duty of fair representation implied from § 9(a), and long before a breach of that duty was held to be an unfair labor practice. *Miranda Fuel*, *supra*, 140 N.L.R.B. 181. The fair representation doctrine was well developed by the federal judiciary before the NLRB adopted it. And, the concepts adopted by the NLRB were those developed by the federal courts. Thus, historically, enforcement of the duty of fair representation does not focus singly, or even primarily, on the NLRB.[6] It would be "strain[ing] to conclude that Congress intended that § 10(b) . . . be applied to causes of action that this Court had not yet divined when § 10(b) was enacted . . . ." *UPS* v. *Mitchell*, 451 U.S. at 75-76 (Stevens, J., concurring and dissenting) (citation and footnote omitted).

Petitioner also argues that the *Hoosier* rule should not be used where a federal cause of action is implied from legislation and not expressly created by Congress, reasoning that congressional intent to apply state limitations to implied causes of action cannot be assumed. Yet the rationale underlying this assertion is weak. Section 301 was enacted in the broadest possible terms; it created federal jurisdiction over "suits for violation of contracts

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[6] This consideration led the Court in *Vaca* v. *Sipes*, *supra*, 386 U.S. at 183, to conclude that duty of fair representation claims were not preempted by the NLRB, and that Congress did not intend "to oust the courts of their *traditional jurisdiction* to curb arbitrary conduct by the individual employee's statutory representative" (emphasis added). With the decision that the NLRB did not have exclusive jurisdiction over fair representation claims, there was an implicit recognition that there would be no centralized administration of these claims. A multiplicity of tribunals with a diversity of local procedures necessarily would be involved. *Cf. Garner* v. *Teamsters Union*, 346 U.S. 485, 490-91 (1953). Thus, *Vaca* left the federal courts free to exercise their "traditional jurisdiction" in fair representation suits. An element of this traditional jurisdiction is the borrowing principle discussed above.

between an employer and a labor organization . . . ." 29 U.S.C. § 185. A wide variety of actions are embraced within § 301,[7] including suits by employees (*Smith* v. *Evening News Ass'n, supra*, 371 U.S. 195), and various causes of action not previously known at law.[8] Rather than establish a single limitations period for all causes of action embraced by § 301, Congress left the limitations issue to state law in accordance with traditional principles.

Considering the breadth of § 301, the distinction between a right of action implied from legislation and one expressly created by Congress does not warrant a departure from the traditional rule of *Hoosier*.[9] There is at least a reasonable likelihood that Congress, anticipating a wide variety of actions under § 301, intended appropriate state limitations to apply to each. Far less likely is the possibility that Congress, in circumstances where appropriate state limitations are available for use, envisioned the application of federal limitations periods to § 301 cases. No authority sanctioned the latter approach in 1947, when § 301 was enacted, and it remains an unprecedented idea today.

As long as an appropriate state statute conforming with federal labor policy is available, it should be bor-

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[7] "[I]t is far too late in the day to deny that Congress intended the federal courts to enjoy wide-ranging authority to enforce labor contracts under § 301." *United Association* v. *Plumbers Local 334*, 452 U.S. 615, 627 (1981).

[8] *E.g., Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 467 (1957) (Congress, in § 301, rejected the common-law rule against enforcement of executory agreements to arbitrate).

[9] *See, e.g., Abrams* v. *Carrier Corp.*, 434 F.2d 1234 (2d Cir. 1970), *cert. denied*, 401 U.S. 1009 (1971). *McAllister* v. *Magnolia Petroleum*, 357 U.S. 221 (1958) (Brennan, J., concurring), supplies no support for Petitioner's proposition that the Court has applied federal statutes of limitations to other judicially implied causes of action. As this Court itself specifically stated in *Hoosier*, that "case represents no departure from the tradition discussed in the text." 383 U.S. at 704 n.6.

rowed. *Mitchell* has already addressed that question. The problem presented here, therefore, simply does not call for the "drastic" degree of "judicial inventiveness" sought by the § 10(b) advocates. *UAW* v. *Hoosier Cardinal Corp., supra*, 383 U.S. at 701, 703.

> "That Congress did not provide a uniform limitations provision for § 301 suits is not an argument for judicially creating one, unless we ignore the context of this legislative omission. It is clear that Congress gave attention to limitations problems in the Labor Management Relations Act, 1947; it enacted a six months' provision to govern unfair labor practice proceedings . . . and it did so only after appreciable controversy. In this context, and against the background of the relationship between Congress and the courts on the question of limitations provisions, it cannot be fairly inferred that when Congress left § 301 without a uniform time limitation, it did so in the expectation that the courts would invent one." [383 U.S. at 703 (footnote omitted).]

In the absence of a definite need, as considered in Part III of this Argument, *infra* at pp. 18 to 24, it is far preferable for the federal courts to borrow an appropriate state statute of limitations than to create a general limitations period for unfair representation cases attacking final and binding arbitration awards. By their very nature, "time limitations are inevitably arbitrary to some extent . . . ." *Mohasco Corp.* v. *Silver*, 447 U.S. 807, 818 (1980). Legislatures are necessarily better equipped to balance the various competing interests and strike an appropriate balance than is a single district judge. Where, as here, the state legislature has specifically established a limitations period for actions to vacate arbitral awards, the collective judgment of its members warrants deference by the federal courts. To say that § 10(b) is also a legislative product is no answer, for Congress never considered the applicability of that limitation to suits challenging the finality of arbitral awards.

II. STATE STATUTES LIMITING ACTIONS TO VACATE ARBITRAL AWARDS SHOULD BE APPLIED TO CLAIMS AGAINST UNIONS AND EMPLOYERS IN POST-ARBITRATION § 301 FAIR REPRESENTATION SUITS

Given that the timeliness of post-arbitration § 301 fair representation suits should be governed, as a matter of federal law, by the most appropriate state statute of limitations, a federal court must then determine which limitation is "the most appropriate one provided by state law." *Johnson* v. *Railway Express Agency*, 421 U.S. 454, 462 (1975). "This depends upon an examination of the nature of the federal claim and the federal policies involved." *UPS* v. *Mitchell*, *supra*, 451 U.S. at 60-61. This Court in *Mitchell* characterized the post-arbitration hybrid § 301 action envisioned by *Hines* as one most analogous to an action to vacate an arbitration award, and found that New York's 90-day statute for such actions furthered federal policy by encouraging a rapid disposition of labor disputes. *Id.* at 64.

An issue that has divided the courts is whether the *Mitchell* characterization applies equally to causes of action against unions, or whether it applies only to those against employers. This question has arisen because only United Parcel Service, the employer in *Mitchell*, petitioned for certiorari. The union did not appeal from the Second Circuit's decision, although it did file a brief to this Court in support of UPS's position. The court below properly concluded that, "[a]lthough only the employer was before the Court, it is reasonably clear from the Supreme Court's opinion that the short limitations period would apply to a companion action against a union for breach of the duty of fair representation." *Del Costello* v. *Teamsters*, 524 F. Supp. 721, 722, (D. Md., 1981), *aff'd*, 679 F.2d 879 (4th Cir 1982) (unpublished decision).[10]

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[10] *Accord Singer* v. *Flying Tiger Line Inc.*, 652 F.2d 1349, 1353 (9th Cir. 1981) (*Mitchell* means "that a suit against a union and

A close reading of *Mitchell* compels the conclusion that it applies to both parties. Indeed, Justice Stevens felt obliged to file a separate opinion, dissenting insofar as the majority did not expressly limit its holding to employers. According to Justice Stevens, it would be "understandable" to interpret the Court's opinion as applying to both union and employer, although he disagreed with that result. *Id.* at 72. Having Justice Stevens' opinion before it, the majority still did not limit the applicability of its decision to the claim against the employer.[11] To read *Mitchell* as limited solely to employers would give effect to the dissent rather than to the majority opinion.

The *Mitchell* characterization analysis is equally applicable to claims against both parties. The threshold issue of the entire action is whether an otherwise "final and binding" arbitral decision may be attacked because of the union's failure to represent the plaintiff fairly at

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employer following an arbitration award could best be characterized as a suit to vacate the arbitration award . . . . [W]e shall treat suits against a union for a breach of the duty of fair representation and against an employer for a breach of a collective bargaining agreement under this type of limitations statute."); *Badon* v. *General Motors, supra*, 679 F.2d at 98 ("[W]e feel the better rule applies the same statute of limitations to both parties."); *Rigby* v. *Roadway Express, Inc.*, 680 F.2d 342 (5th Cir. 1982) (same rule applied without discussion); *Fedor* v. *Hygrade Food Products Corp.*, 687 F.2d 8 (3d Cir. 1982). *Contra Flowers* v. *Steelworkers, supra*, 671 F.2d 87; *Hand* v. *International Chemical Workers Union*, 681 F.2d 1308 (11th Cir. 1982); *Edwards* v. *Sea-Land Service Inc., supra*, 678 F.2d 1276. *See also Sear* v. *Cadillac Automobile Co.*, 654 F.2d 4, 6-7 (1st Cir. 1981); *Hall* v. *Printing Union Local 3, supra*, 112 L.R.R.M. at 2151 n.7.

[11] The Second Circuit Court of Appeals, in *Flowers* v. *Steelworkers, Local 2602, supra*, 671 F.2d 87, was particularly troubled by this consideration, although after "struggl[ing] with this difficult question," it held that arbitration award statutes of limitations do not apply to union claims. *Id.* at 90.

the arbitration proceeding. In other words, may the award be vacated? *Mitchell* affirms that the elements of the claim against an employer are the same as the elements of such a claim against a union:

> "[T]o prevail against either the company or the Union, petitioners must not only show that their discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty by the Union. . . ." [451 U.S. at 62, quoting *Hines*, *supra*, 424 U.S. at 570-71.]

The Court rejected the breach of contract characterization of the action sought by the plaintiff because of the fair representation component. Because of this aspect, the shorter time limit on actions to vacate arbitral awards was warranted. In other words, the employer gained the advantage of the shorter time limitation (90 days as opposed to the six-year limit on contract actions) because proof of the union's breach of duty was a necessary element of the claim against the employer.

> "Since the conclusion of the Joint Panel was, under the collective-bargaining agreement, 'binding on all parties,' respondent was required in some way to show that the Union's duty to represent him fairly at the arbitration had been breached before he was entitled to reach the merits of his contract claim. This, in our view, makes the suit more analogous to an action to vacate an arbitration award than to a straight contract action.
>
> "We think that the unfair representation claim made by an employee against his union, even though his employer may ultimately be called upon to respond in damages for it if he is successful, is more a creature of 'labor law' as it has developed since the enactment of § 301 than it is of general contract law." [451 U.S. at 62-63 (footnote omitted).]

It is thus apparent that the *Mitchell* court viewed the combined claims against union and employer as most

closely analogous to an action to vacate an arbitral award. This reasoning is sound.[12]

The union's duty of fair representation and the employer's contractual obligations, both enforceable in § 301 actions, are inextricably tied together in the *Hines*-type action.[13] Both claims stem from the alleged unauthorized discharge contrary to the contract, inasmuch as the claim against the union focuses on an alleged failure to represent the employee fairly in enforcing contractual rights.

Also, both claims call for interrelated proof. To prevail against the employer, the plaintiff must "prove that the union as bargaining agent breached its duty . . . in its handling of the employee's grievance." *Vaca* v. *Sipes*, *supra*, 386 U.S. at 186. "[S]imilarly, to prevail against the union, the employee must prove that the union breached its duty of fair representation and, if he wishes to recover loss of employment damages for which the union is responsible, that the employer breached the agreement." *UPS* v. *Mitchell*, *supra*, 451 U.S. at 73 n.2. (Stevens J., concurring and dissenting). *See also Bowen* v. *Postal Workers*, 51 U.S.L.W. 4051 (U.S. Jan. 11, 1983).

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[12] The Court similarly characterized an earlier fair representation case. In *Humphrey* v. *Moore*, *supra*, 375 U.S. 335, a group of employees who lost their jobs as a result of the merger of two operations alleged that the contract's seniority provision had been violated. They also claimed that the union had unfairly represented them before a joint grievance committee which had decided to dovetail the seniority list of the two merging companies. The Court stated, "the allegations of the complaint, if proved, would effectively undermine the decision of the Joint Committee as a valid basis for Moore's discharge. For these reasons this action is one arising under § 301 of the Labor Management Relations Act. . . ." *Id.* at 343-44 (footnote omitted).

[13] The availability of § 301 as an enforcement mechanism against employer and union "reflects the interests of Congress in promoting 'a higher degree of responsibility upon the parties to [labor] agreements . . . .'" *Hines* v. *Anchor Motor Freight, Inc.*, *supra*, 424 U.S. at 561.

Logically, both elements of the hybrid action should be subject to identical time constraints. No prejudice results since, under *Mitchell*, the employee is already under an obligation to file his action promptly.[14]

Characterization of both claims in the *Hines* hybrid § 301 case as an action to vacate the arbitral award also effectuates federal labor policy. "[T]he undesirability of the results of the grievance and arbitral process being suspended in limbo for long periods," as addressed by *Mitchell* (451 U.S. at 64), is significant for both unions and employers. Congress has declared as a paramount federal policy the promotion of industrial peace through the *quick* and *final* adjustment of labor disputes by a method agreed upon by the parties. The key to realization of that policy is grievance arbitration. "This system, with its heavy emphasis on grievance, arbitration, and the 'law of the shop,' could easily become unworkable if a decision which has given 'meaning and content' to the terms of an agreement, and even affected subsequent modifications of the agreement, could suddenly be called into question . . . years later." *Id.* at 64. A detrimental impact on the system remains likely so long as a § 301 unfair representation action can be maintained against either the union or the employer. Accordingly, the employee's claims against both union and employer should be governed by the same statute of limitations.

The Court has also recognized the importance of making employers and unions equally subject to suit in order to assure an appropriate remedy for the employee and to

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[14] The court below properly recognized these considerations: "Joint presentation and trial of the two claims is virtually compelled by the nature of the concomitant actions against the employer and union in § 301 cases. Plaintiff must now bring suit against the employer within the period of time for vacating the arbitration award in any event and is not substantially burdened by having to sue the union at the same time." *Del Costello* v. *Teamsters, supra*, 524 F. Supp. at 725.

allocate damages properly. If the employer were not subject to suit, for example, the employee could not obtain reinstatement to his job. Also, "[i]t could be a real hardship on the union to pay these damages, even if the union were given a right of indemnification against the employer. With the employee assured of direct recovery from the employer, we see no merit in requiring the union to pay the employer's share of the damages." *Vaca* v. *Sipes*, *supra*, 386 U.S. at 197 (footnote omitted). For a court to grant full relief, both parties must be before it. Since the plaintiff must prove the wrongdoing by both parties, if he is to prevail, there is little to commend "a rule which would permit a court that has litigated the fault of employer and union to fashion a remedy only with respect to" one of those parties. *Id.* at 187.

These principles highlight the need to apply equal limitations periods to suits against unions and employers. Since *Mitchell* has already decided that state statutes for vacating arbitral awards should be borrowed in post-arbitration § 301 cases, then the limitations established by those statutes should guide claims against both unions and employers.[15]

III. WHERE THE FORUM STATE HAS NO STATUTE OF LIMITATIONS CLOSELY ANALOGOUS TO THE § 301 ACTION OR CONSISTENT WITH UNDERLYING FEDERAL POLICIES, THEN THE COURTS SHOULD APPLY § 10(b) OF THE NLRA

As shown, *Hines* § 301 actions against employers and unions are best characterized as actions to vacate arbitral awards. The application of state statutes to such actions conforms with and furthers the national labor policies at stake. It permits expression of the policy favoring fair

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[15] If this Court departs from *Mitchell* and decides that § 10(b) is the appropriate limitation for post-arbitration § 301 actions, it should make clear that its holding applies to claims against both employer and union. Petitioner herein is in agreement that equal time limits should be established (Pet. Brief, at 27-28).

union representation, but equitably accommodates that policy to an equally important objective, that is, the promotion of labor peace through the final adjustment of disputes by a method agreed upon by the parties and the "relatively rapid disposition of labor disputes." *UPS* v. *Mitchell*, *supra*, 451 U.S. at 63. Yet some states have not enacted limitations periods governing actions to vacate arbitration awards, and not all fair representation actions under § 301 feature a final and binding grievance resolution. We examine these situations in turn, and urge that the six-month limitations period set forth in § 10(b) should be applied in each instance.

A. Post-Arbitration § 301 Actions; No Suitable State Limitation Available

Eight states[16] have no limitations statutes for actions to vacate arbitral awards. *Mitchell* has already rejected as not closely analogous various suggested state characterizations, *e.g.*, contract, tort, malpractice,[17] and they become no more acceptable in the absence of a statute for vacating arbitral awards. They are neither closely analogous to the § 301 post-arbitration action nor consistent with the policy underlying the federal cause of action, especially the policy favoring the rapid disposition of labor disputes. In cases arising in these states, it will thus be incumbent upon the courts judicially to devise an appropriate standard.

This approach does not conflict with the traditional rule discussed above. While the courts should, in the first instance, look to the state law characterization, that characterization must be rejected if it is "unreasonable or otherwise inconsistent with national labor policy." *UAW* v. *Hoosier Cardinal Corp.*, *supra*, 383 U.S. at 706.

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[16] *UPS* v. *Mitchell*, *supra*, 451 U.S. at 62 n.4.

[17] "All of these characterizations suffer from the same flaw . . . .: they overlook the fact that an arbitration award stands between the employee and any relief which may be awarded against the company." *UPS* v. *Mitchell*, *supra*, 451 U.S. at 62 n.4.

As this Court stated in *Johnson* v. *Railway Express Agency, supra*, 421 U.S. at 465:

> "Although state law is our primary guide in this area, it is not, to be sure our exclusive guide. As the court noted in *Auto Workers* v. *Hoosier Corp.* . . . considerations of state law may be displaced where their application would be inconsistent with the federal policy underlying the cause of action under consideration."

Then, in *Occidental Life Ins. Co.* v. *EEOC*, 432 U.S. 355, 367 (1977), it noted:

> "But the Court has not mechanically applied a state statute of limitations simply because a limitations period is absent from the federal statute. State legislatures do not devise their limitations periods with national interests in mind, and it is the duty of the federal courts to assure that the importation of state law will not frustrate or interfere with the implementation of national policies . . . . State limitations periods will not be borrowed if their application would be inconsistent with the underlying policies of the federal statute." [Citations omitted.]

In these instances, we would agree that § 10(b)'s six-month limit for unfair labor practices furnishes an appropriate standard for actions against employers and unions. The unfair labor practice resembles the cause of action at hand, and § 10(b) comports with federal policy favoring speedy resolution of these disputes. Its relevance to the hybrid § 301 fair representation action is well argued by the Petitioner in this case and in *United Steelworkers of America* v. *Flowers, supra, cert. granted*, No. 81-2408, and need not be reargued here.

B. Fair Representation Cases In Which No Final And Binding Arbitral Award Has Been Rendered

Application of § 10(b) is also appropriate in § 301 actions against employers *and* unions where, unlike *Mitchell* or this case, the grievance has not been submitted to a final and binding resolution. The characteriza-

tion of these cases has divided the Circuits. Prior to *Mitchell*, some identified them as breach of contract actions, while others viewed them as tort actions. *See, e.g., Butler* v. *Local 823, International Brotherhood of Teamsters*, 514 F.2d 442, 447 (8th Cir.), *cert. denied*, 423 U.S. 924 (1975); *Abrams* v. *Carrier Corp., supra*, 434 F.2d at 1251-53. As shown below, a different characterization is now required.

In light of *Mitchell*, the contract characterization is not "closely analogous" to the hybrid § 301 action, whether or not an arbitration has taken place. Thus, the breach of contract characterization "ignores the significance of the fact that [the action] was brought in the District Court pursuant to § 301(a) of the LMRA and that the indispensable predicate for such an action is . . . a demonstration that the union breached its duty of fair representation." *UPS* v. *Mitchell, supra*, 451 U.S. at 62.[18] And, "the unfair representation claim . . . is more a creature of 'labor law' as it has developed since the enactment of § 301 then it is of general contract law." *Id.* at 63.

Moreover, "a collective bargaining agreement 'is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate.' . . . In defining the relationships created by such an agreement, the Court has applied an evolving federal common law grounded in national labor policy." *Bowen* v. *Postal Workers, supra*, 51 U.S.L.W. at 4054. Since "one of the leading federal policies in this area is the 'relatively rapid disposition of labor disputes'" (*UPS* v. *Mitchell, supra*, 451 U.S. at 63), the multi-year limitations of the states relating to contract, tort and malpractice actions are too long to be applied consistently with federal policy.

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[18] This is true whether the grievance was submitted to arbitration (*Hines* v. *Anchor Motor Freight, supra*, 424 U.S. 554), or not (*Vaca* v. *Sipes, supra*, 386 U.S. 171).

The importance of resolving labor disputes quickly pertains whether or not the grievance has been pursued all the way through arbitration. For the entire grievance machinery is "at the very heart of the system of industrial self-government . . . . The processing machinery is actually a vehicle by which meaning and content are given to the collective bargaining agreement." *UPS* v. *Mitchell, supra*, 451 U.S. at 63-64. Thus, the policy interests which inform the selection of an appropriate limitations period are essentially the same in both post-arbitration cases alleging unfair representation and those where arbitration has not occurred.

> "The deterioration of evidence over time is the same regardless of arbitration and the importance to an employer of being able to rely upon a settlement reached after negotiation with a union is no less than the importance of being able to rely upon a settlement reached after arbitration. In both cases, the employer needs to know how many employees it is carrying on its payroll so that it may plan its operations accordingly. . . . Limitation rules should not promote costly and time-consuming adjudicative processes, especially in the field of labor relations where federal policy strongly favors 'the relatively rapid disposition of labor disputes.'" [*Hall* v. *Printing Union, Local 3*, 112 L.R.R.M. 2151, 2154 (7th Cir. 1982) (citations omitted).]

Obviously, the foregoing considerations weigh heavily against application of state statutes of limitations governing contract, tort or malpractice claims to § 301 fair representation cases when arbitration has not occurred. But they furnish no basis for selecting between § 10(b) and state statutes for vacating arbitral awards as the appropriate limitation for a § 301 case in which the plaintiff's rights have not been arbitrated.

The Sixth and Seventh Circuit Courts of Appeal have concluded that state statutes governing the vacation of

arbitration decisions are equally applicable to § 301 fair representation cases, whether or not an award has issued. *Hall* v. *Printing Union, Local 3, supra*, 112 L.R.R.M. at 2153; *Badon* v. *General Motors Corp., supra*, 679 F.2d at 98. In *Hall*, a state three-month limitation was applied to the claim against the employer, while § 10(b) was held applicable to the claim against the union. *Badon* made clear that the same limitation applied to all claims asserted against both parties. With deference, we submit that a statute limiting the period within which an arbitral award can be attacked is less analogous than § 10(b) in circumstances where no award has been rendered. Consequently, the latter limitation should govern unfair representation claims against both unions and employers. *See Lewis* v. *Harbison-Walker Refractories*, 112 L.R.R.M. 2242, 2244 (N.D. Ind. 1982).

In *Mitchell*, this Court characterized *Hines* § 301 suits as ones to vacate arbitration awards because in view of the finality of such awards, the plaintiff is required "to show that the Union's duty to represent him fairly at the arbitration ha[s] been breached before he . . . [is] entitled to reach the merits of his contract claim." 451 U.S. at 62. Where no arbitration award has been rendered, of course, there is nothing to vacate. The fairness and regularity of the arbitration procedure will not be in issue. Accordingly, the gravamen of such an unfair representation suit is more closely analogous to an unfair labor practice proceeding, to which § 10(b) is applicable, than to an action to vacate an arbitral award.

Less "judicial inventiveness" is called for in applying § 10(b) to an § 301 action in which arbitration has not occurred than in seizing upon a state statute that, by its terms, is inapposite in light of the action's subject matter. There can be no pretense that state legislatures, in enacting limitations periods for actions to vacate arbitration awards, considered the same limitations suitable for cases in which no award has issued. In short,

there is little reason to borrow state limitations periods for § 301 unfair representation cases unless the plaintiff's rights have been arbitrated.

IV. FINAL AND BINDING DECISIONS BY BIPARTISAN GRIEVANCE COMMITTEES ARE THE EQUIVALENT OF ARBITRAL AWARDS

Advancing an argument not made by any party to this case here or in courts below,[10] Teamsters For A Democratic Union (TDU) urges in its *amicus* brief that a decision by a joint labor-management grievance committee is not the equivalent of an award by an impartial arbitrator. Therefore, it is argued, a *Hines* § 301 action challenging a joint committee decision should not be governed by state limitations periods for suits to vacate arbitral awards found applicable by this Court in *Mitchell*. This argument is based on faulty analysis and finds no support in law.

The National Master Automobile Transporters Agreement, to which Anchor and Local 557 are signatory, establishes a four-step grievance procedure. The first step calls for settlement attempts at the local level. Failing resolution at the local level, the local union or the employer may present the grievance to a panel of the Eastern Conference Joint Arbitration Committee for decision. Each panel is composed of equal numbers of labor and management representatives, none of whom can be officials of the local union or employer involved in the grievance dispute. A majority vote of the panel is final and binding on both parties. If, however, the grievance is deadlocked by the panel, it proceeds automatically to the National Joint Arbitration Committee, also composed of labor and management representatives in equal numbers, for final decision by majority vote. Grievances deadlocked by the National Committee are referred to a tri-

[10] The argument should not be considered by the Court. *UPS* v. *Mitchell*, *supra*, 451 U.S. at 60 n.2.

partite board of arbitration, consisting of three members representing labor, management and the public. The Petitioner's grievance in this case was heard by the Eastern Conference Joint Arbitration Committee and rejected by majority vote.

Final and binding decisions by joint committees have been treated uniformly as the equivalent of arbitral awards by this Court and all lower courts. In *Drivers Union* v. *Riss & Co.*, 372 U.S. 517 (1963), where the federal policy of judicial deference to arbitrator's awards was held equally applicable to the awards of joint or bipartisan committees, this Court reasoned:

> "It is not enough that the word 'arbitration' does not appear in the collective bargaining agreement, for we have held that the policy of the Labor Act 'can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play' . . . . Thus, if the award at bar is the parties' chosen instrument for the definitive settlement of grievances under the Agreement, it is enforceable under § 301." [*Id.* at 519 (citations omitted).]

Similarly, in *Humphrey* v. *Moore*, *supra*, 375 U.S. at 351, the Court stated: "The decision of the committee, reached after proceedings adequate under the agreement, is final and binding upon the parties, just as the contract says it is." [20]

The Court also has made clear that the bar of the finality provision contained in the Car-Haul Agreement at issue here is not to be lightly removed, since it "has sufficient force to surmount occasional instances of mistake" or "mere errors in judgment." *Hines* v. *Anchor*

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[20] *See also Chicago Cartage Co.* v. *Teamsters Local 710*, 659 F.2d 825, 827 (7th Cir. 1981); *Teamsters Local 30* v. *Helms Express, Inc.*, 591 F.2d 211, 216 (3d Cir.), *cert. denied*, 444 U.S. 837 (1979); *Early* v. *Eastern Transfer*, No. 82-1217 (1st Cir. Feb. 1, 1983), slip op. at 5.

Motor Freight, supra, 424 U.S. at 571. Central to the *Hines* analysis is the premise that, absent proof of dishonest, bad-faith or discriminatory union conduct, adverse grievance decisions are final and binding.[21] The bipartisan composition of the Teamster grievance committee in *Hines* in no way detracted from the finality to which the award was entitled under the agreement. Final and binding joint committee decisions are due the same deference as nonpartisan arbitral awards, whether challenged by a party to the agreement (*e.g.*, *Drivers Union* v. *Riss, supra*, 372 U.S. 517), or by an individual (e.g., *Hines*; *Humphrey* v. *Moore, supra*, 375 U.S. 335).

If joint committee and arbitral awards are viewed as final and binding for the purpose of establishing individual substantive rights, then, *a fortiori*, they are to be regarded as final for purposes of determining the statute of limitations governing the individual's right of action. Indeed, *Mitchell* has already disposed of this issue, finding that a suit to vacate a Teamster joint grievance committee's decision would be limited by the state statute on actions to vacate arbitral awards, and rejecting the tort or "action upon a statute" characterization now urged by *Amicus* TDU.

Very recently, the Fifth Circuit Court of Appeals squarely faced the issue raised by TDU and summarily rejected the argument that the Mississippi statute for actions to vacate arbitral awards was not applicable:

> "Rigby also asserts that the peculiar make-up of the universal Teamsters Collective Bargaining Agreement Grievance Panels keeps the decision from being those contemplated as arbitration by the law. This

[21] A right of action for unfair representation is available to grievants whose cases have been decided adversely by a joint committee, no less than to those who have lost before an impartial arbitrator. Thus, the statement that "this Court's 'bulwark' against arbitrary union conduct [is] beyond the reach of most Teamsters" (TDU Brief, at 12), is utter nonsense.

> contention is also novel and without legal support. The Teamsters grievance panel is bipartisan, rather than tripartite or nonpartisan as is more common in the tribunals established by collective bargaining agreements. Nevertheless, the Teamsters arbitration panel has been in use for many years and is well recognized as a proper form of arbitration panel for the resolution of grievances under the obligation to arbitrate contained in federal law. [*Rigby* v. *Roadway Express, Inc., supra*, 680 F.2d at 344.] [22]

As shown, uniform decisional law establishes that, if a grievance award is final and binding under the contract, then it is to be treated as such whether the award is rendered by a bipartite committee, a tripartite tribunal, or a single arbitrator. TDU attempts to circumvent this finality principle by arguing that, since a joint committee award adverse to the grievant only results when one or more of the labor members votes against the grievant, such an award is in reality equivalent to a union decision to abandon the grievance short of arbitration. This argument ignores the realities of the grievance machinery.

The grievant's exclusive bargaining representative, upon submitting his grievance to the joint committee for decision, can abandon the grievance only by withdrawing it. If the grievance is lost by majority vote of the hearing panel, it cannot be pursued further by the local union representing the grievant. E.g., *Harris* v. *Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167, 172 (5th Cir. 1971). No discretion is involved, inasmuch as the decision is final and binding on all parties. Nor does the fact that one or more labor members voted against the grievant evidence a discretionary choice by the grievant's local union

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[22] *See also Davidson* v. *Roadway Express, Inc., supra*, 650 F.2d at 904 n.1; *Singer* v. *The Flying Tiger Line Inc., supra*, 652 F.2d 1349 (suit to challenge award of bipartisan Railway Labor Act System Board governed by statute on actions to vacate arbitral awards).

to abandon his grievance. The panel's labor members are not officials or representatives of the local union having responsibility for representing the grievant, but rather of other local unions signatory to the agreement. As such, they have little to gain or lose whether the grievance is decided or deadlocked.

Under this Court's analysis in *Hines*, when a grievance has been submitted to a final and binding decision, the focus of a subsequent § 301 unfair representation suit is "whether there is substantial reason to believe that a union breach of duty contributed to the erroneous outcome of the contractual proceedings." 424 U.S. at 568. This analytical focus is the same notwithstanding the hearing body's composition. Therefore, it makes little sense to urge, as TDU does, that different limitations periods should apply depending on whether the final decision is made by a tripartite, bipartisan or nonpartisan hearing body.

CONCLUSION

For the foregoing reasons, the decision of the United States Court of Appeals for the Fourth Circuit should be affirmed.

Respectfully submitted,

DAVID PREVIANT
ROBERT M. BAPTISTE
ROLAND P. WILDER, JR.
(Counsel of Record)

WILMA B. LIEBMAN
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
Area Code (202) 624-6949

Attorneys for the International Brotherhood of Teamsters, Amicus Curiae